

Accident Prevention Subcommittee Meeting

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Hall of States - Washington, DC

May 5, 1999

8:30 a.m. - 4:30 p.m.

I. OPENING REMARKS - Jim Makris

Jim Makris (U.S. EPA/CEPPO) opened the meeting and facilitated introductions by the Subcommittee members and the public. Mr. Makris noted that the recent events surrounding the high school bombing in Littleton, Colorado, the crisis in Kosovo, and the destructive tornadoes in Oklahoma provide a reminder of the importance of this Subcommittee and its mission to prevent accidents, protect life, property, and the environment, while simultaneously taking steps to maximize public information.

Next, Mr. Makris stated that Richard Fairfax, who is the Director of Compliance Programs for the Occupational Safety and Health Agency (OSHA), has joined the Subcommittee as John Miles' replacement. However, Mr. Fairfax was not able to attend the May 5th meeting and, therefore, sent his deputy Tom Galassi (OSHA) in his place. In addition, Paula Littles, from the Paper Allied Industrial Chemical and Energy Workers International Union (PACE, formerly OCAW), who recently testified before Congress on the Risk Management Program, has joined the Subcommittee for this meeting. Mr. Makris stated that EPA has been looking for a union representative to participate on the Subcommittee, and hoped that Ms. Littles will consider joining the Subcommittee permanently. Mr. Makris also announced the Jerry Scannel (National Safety Council) and Larry Gales (Oklahoma Department of Environmental Quality) were unable to attend the meeting and send their regrets.

Mr. Makris informed the Subcommittee that a meeting of implementing agencies, states seeking delegation, as well as EPA regional offices was held a few weeks ago. The conference lasted for two days and included:

- A discussion on the status of the programs being developed by RMP Implementing agencies.
- A demonstration of RMP*Review in its current status, which is designed to help implementing agencies search RMP data (comments were invited).
- A plenary discussion on questions regarding enforcement and compliance of the risk management program. As a result of this discussion, a ten-person committee was established to discuss the possible development of a national initiative. The Committee is charged to report back to the group within 30 days.

II. RMP IMPLEMENTATION WORKGROUP UPDATE - Bill Finan

Bill Finan (U.S. EPA/CEPPO and Chair of the RMP Implementation Workgroup) stated that, when the Workgroup was first formed, its primary task was to identify products and services that are needed to implement the risk management program. The Workgroup has since focused primarily on how to make offsite consequence analysis (OCA) information available to the public now that it has been decided that it will not go on the Internet. This issue is still unresolved despite a list of suggestions produced by the Workgroup. However, according to Mr. Finan, EPA has found the Workgroup's discussions to be very helpful because they raise many issues that may not be considered otherwise.

Status of the Propane Issue

Jim Belke (U.S. EPA/CEPPO) stated that U.S. Court of Appeals for the District of Columbia recently issued an order that stayed the June 21, 1999, effective date of the final Risk Management Program Rule, as applied to facilities having more than 10,000 pounds of propane in a process, pending further order of the court. As background, Mr. Belke stated that six parties sued EPA regarding the RMP rule, five of which are in the process of settlement. However, the National Propane Gas Association (NPGA) proceeded with litigation and was recently granted this stay. If the NPGA wins the case, propane will be delisted as a regulated substance. If EPA wins, the stay will be lifted and the relevant facilities will have to comply with the rule. Mr. Belke stated that the stay exempts approximately 40% of the covered facilities required to submit an RMP under the rule.

Mr. Belke stated that, just prior to the Court decision, EPA issued a statement announcing its intent to issue an interim stay of the effective date of the RMP rule as it applies to flammable hydrocarbon fuels, including propane, butane, ethane, propylene, and methane, stored in quantities no greater than 67,000 pounds in a process. Currently, facilities with more than 10,000 pounds of any listed flammable substance in a process must submit an RMP to EPA by June 21, 1999. "In a process" means one or more tanks that are interconnected or located close enough together

that a release from one tank could result in a release from neighboring tanks ("co-location"). The stay was announced after new information revealed that the original rule unintentionally covered small propane users, including farms. EPA's intent was only to cover those facilities that presented the greatest offsite consequences, not small propane users.

While the court case is pending, EPA is proceeding with these plans to propose an exemption from the RMP Rule for flammable hydrocarbon fuels that are stored in separate tanks that are no larger than 18,000 gallons. Since under existing standards, an 18,000-gallon propane tank may normally be filled to no more than 88 percent of its capacity and propane represents the vast majority of fuel use among listed flammables, the Agency intends to cap eligibility for the exemption at 67,000 pounds. Fuel stored in multiple tanks that are interconnected or collocated and have an aggregate amount of more than 67,000 pounds, or stored in tanks that are interconnected or co-located with another process covered by the RMP rule, would not be eligible for the exemption. EPA intends to stay the Rule as it applies to fuels that would be eligible for the proposed exemption while it conducts rulemaking to establish the exemption. In addition, Mr. Belke stated that there are two pieces of Congressional legislation pending regarding propane. HR 1301 proposes to amend the Clean Air Act (CAA) to delist liquid petroleum gas and Senate Bill 880 proposes to delist flammable fuels. If either legislation is passed into law, propane will no longer be a covered substance, and facilities will not be required to submit an RMP for propane.

Discussion

Mr. Makris stated that several letters have been sent to congressional representatives in support of delisting propane. However, the fire service has provided a reminder that every year fire fighters get killed or severely injured in propane explosions. In addition, a propane accident in Mexico City in 1984 was the second largest industrial accident anywhere in the world; second to Bhopal. Propane remains a large concern because it is ubiquitous. Mr. Makris stated that the National Fire Protection Association (NFPA) Standard 58 for Liquefied Petroleum Gas must be researched to determine its effectiveness, whether it is followed, and, if it is followed, whether it is followed consistently. Irv Rosenthal (Chemical Safety Board) stated that it would be extremely beneficial to put the data obtained from research on NFPA 58 into a useful format. Mr. Belke stated that most of the background information on NFPA 58 can be found in the docket for the RMP Rule (number A9173).

Bert Langley (Georgia Environmental Protection Division) stated that the Risk Management Program is different in that it is the first program that requires that all data be submitted at the Federal level only. And, although the Rule has been stayed at the Federal level, state laws, which in some cases are different, remain in effect. Because of the recent Court decision, the State of Georgia has made the decision not to enforce compliance; however, states may begin to receive pressure from outside entities and will ultimately have to pursue compliance. In addition, if a facility in a state that covers propane has an accident involving propane and has not submitted an RMP, they are then in violation of the state statute and could be prosecuted accordingly. Art Burk (DuPont) stated that DuPont certainly would not want to be in violation of Georgia State law and asked EPA for guidance on this issue. Mr. Finan noted that of the States seeking delegation only Georgia and Ohio have passed legislation that includes propane; other states, including Florida, New Jersey, and Nevada do not cover propane.

Mr. Belke stated that over 200 RMPs have already been submitted that contain propane. A final decision has not been made regarding how to handle these submissions. One option is to call each submitter and ask if they would like their RMP returned or posted as a voluntary submission. In response to Mr. Langley's concern, Kathy Jones (U.S. EPA/CEPPO) stated that the state versus federal legislation issue could be explained during the phone calls to facilities that have submitted an RMP involving propane. Ms. Jones asked the Subcommittee for feedback on what to do with the plans that have already been received or may be received in the near future. Karen Shanahan (U.S. EPA/CEPPO) added that if a facility chooses to have their plan sent back and the stay is subsequently lifted, the facility would be required to resubmit their plan. However, if the facility chooses to have their RMP posted as a voluntary submission and the stay is lifted, there is no additional work needed by the facility. Similarly, if a facility has submitted a plan that contains both propane and another covered chemical, then the same options are available: to send the plan back and require a resubmission excluding propane or allow the plan to be posted voluntarily. Ms. Shanahan also stated that the Agency must determine a cut-off date for contacting facilities that have submitted plans including propane after which submitted plans would be assumed to be voluntarily submitted. Ms. Shanahan proposed June 1, 1999, as a potential date, and asked whether Subcommittee members felt that would provide enough time for facilities to learn about the stay.

Bob Barrish (State of Delaware) stated that the State of Delaware feels comfortable that they are primarily aligned with EPA headquarters on this matter. However, there are sections in the Delaware statutes that are different, such as the determination of threshold quantities based on release rates. Therefore, the State of Delaware is advising affected facilities to look at both statutes.

Tim Gablehouse (Jefferson County Local Emergency Planning Committee (LEPC)) stated that it might be helpful to use the preamble in the *Federal Register* to the new regulation being developed to more fully explain the situation. Mr. Gablehouse suggested that, until there is resolution by Congress, EPA must accept RMPs covering propane. Tony Earl (Clean Air Action) proposed sending a letter to those facilities that have submitted RMPs with propane indicating that their submission will be regarded as voluntary, but they may withdraw their submission if they choose. If the stay is lifted, they may have to resubmit their RMP. Given the uncertainty of the final propane outcome, Governor Earl suggested that most facilities will most likely not withdraw their submission. Dr. Rosenthal questioned whether, to not lose the value of the data submitted, the law would permit conducting an anonymous statistical analysis of the data in the RMP files that are submitted. Ms. Jones stated that she believes that, under the Freedom of Information Act (FOIA), if EPA has possession of the files they must be made accessible to the public. Ms. Jones also noted that this should also be made clear to the submitters. Mr. Makris added that, not only does he think EPA would be allowed to conduct a statistical analysis of the data, but the court decision will most likely order the Agency to study all available information. Ms. Shanahan concluded the discussion by clarifying that EPA will send out letters to all propane submitters explaining their options. EPA will accept voluntary submissions.

Auditing - The Role of the Implementing Agency

According to Mr. Finan, the initial draft EPA guidance on auditing has substantially changed. He added that a wide range of options have been discussed, ranging from a simple checklist to a full-blown site visit. The EPA audit protocol and guidance is currently in draft form and EPA is working to finalize it. In response to Subcommittee members' questions about the guidance, Mr. Finan stated that, to avoid mandating that states take a certain course of action on audits, EPA is providing a variety of options in the guidance. Mr. Langley added that the law specified that Risk Management "*Plans*," not the risk management "*program*," are to be audited. State laws often do not give implementing agencies the authority to audit the *program*. He added that an audit should be an evaluation of whether all of the pieces of the plan are present and whether it truly represents the facility and its risks.

Mr. Barrish stated that Delaware was unsure about its authority to perform inspections, despite EPA's assurance that this authority is included under the authority provided to states by the CAA. As a result, Delaware included in their regulations the authority for implementing agencies to perform inspections. Mr. Makris added that EPA found it more desirable to have states perform their own audits, rather than EPA performing them. In this case, states can inform EPA about what they are doing and the public can participate in an open dialogue and express dissatisfaction if they disagree with the inspection process.

In response to Subcommittee members' questions about the difference between audits and inspections, Jack Weaver (Center for Chemical Process Safety) stated that an audit should check the accuracy of the RMP. Mr. Langley added that compliance with the law and the regulations is a separate issue from conforming accurately to the risk management program. Ms. Jones added that, in addition to a system check, the audit should also verify the information submitted by the facility against that gathered under other CAA programs. She added that an in-house completeness review can accomplish a lot. Dr. Rosenthal stated that the audit should provide information on the adequacy of a RMP as it compares to the risk management program. He added that audits also serve as a mechanism to monitor the regulated community. According to Dr. Rosenthal, the public needs to know if the regulation translates into an effective program and the extent of an audit depends on the confidence rate desired.

Mr. Burk stated that EPA and OSHA need a unified approach to accident prevention. He added that OSHA already has prevention processes in place. Mr. Gablehouse stated that EPA regional offices need very specific guidance on inspections and audits. Mr. Makris stated that the auditing issue is not resolved and the goals of the audits need to be detailed. In addition, EPA and the states need to determine the best way to audit and inspect facilities without raising contention between industry and the states.

In response to a question from Jackie Warren (Public Interest Lawyer) about risk communication guidance, Carole Macko (U.S. EPA/CEPPO) stated that a list of prepared definitions of the OCA data elements will be available on the National Safety Council website by June 1, 1999. Lee Feldstein (NSC) noted that these definitions were developed through a cooperative agreement and designed specifically for environmental journalists. Ms. Macko

added that EPA is also developing a series called RMP Network that will present examples of low cost, innovative risk communication projects.

In response to a question from Mr. Weaver concerning the number of facilities using propane as a fuel and the number of facilities covered by the rule, Mr. Belke stated that, if propane legislation passes, there will be no repercussions for propane facilities. Mr. Makris added EPA intends to stay all flammable fuels stored in amounts less than 67,000 pounds; propane is the only fuel that would be exempted at all levels. Even if Congress supports EPA's view on the 67,000 pound threshold, if they change the requirement, they could be accused of not following the Court's instructions. Mr. Belke added that this issue is a significant concern for Congress and is something they want to address. In response to a question from Dr. Rosenthal concerning support from firefighters, Mr. Makris stated that the Chief of Hazardous Materials of the Chicago Fire Department supported relief for small users of propane and suggested that EPA and NPGA find the appropriate compromise on this issue. However, because of litigation, EPA and NPGA could not discuss the issue. He added that the Congressional representatives from Midwestern states expressed concerns brought up by schools with propane tanks. The schools did not want to communicate propane hazards to the public because it might raise concerns by parents about explosions and cause the schools to incur costs to change their propane tank setup. However, he added that public communication about these risks could encourage safe practices.

Status of RMP State Implementation

Mr. Finan noted that many states have not addressed the issue of delegation because they are waiting on a final decision from EPA about such issues as coverage of propane and what information will be on the Internet. The propane issue has piqued many states' interest in the RMP program. He added that it is necessary for all of the implementing agencies (i.e. EPA Regions, as well as State and local agencies) to look at each other as equals. It is essential that state level agencies and EPA work together as partners.

Hazardous Materials Spill Prevention Week

Mr. Gablehouse introduced a topic that he was asked to raise in a letter from Dwayne Mundy, Chair of the LEPC Issues Subgroup of the RMP Implementation Workgroup. The letter recommends establishing a national Hazardous Materials Spill Prevention Week similar to that conducted by the North Central Florida LEPC, which has been successful in coordinating stakeholders efforts on public outreach and education. Mr. Mundy expressed that, in Florida, the now annual HazMat Awareness Week was an early step for LEPCs reaching the critical momentum needed for program success. A key result has been increased industry and local government support of LEPCs and the State Emergency Response Commission (SERC). However, Mr. Mundy stated in his letter that, most LEPCs nationwide seem to be struggling and many LEPCs have become disenchanted with RMP. Unfortunately, many LEPCs now view RMP as an unfunded mandate asking them to assume the liability for giving out OCA data that are too dangerous for EPA to put on the Internet. Therefore, a Spill Prevention Week could help everyone remember that the focus of RMP needs to be preventing accidental chemical releases. Mr. Mundy recommended that EPA consider organizing the week around the 2000 International Hazardous Material Spills Conference to allow sufficient planning time and a tie-in with another newsworthy event.

Mr. Gablehouse noted that while a very worthy effort, it is a major investment of time and money, and it is unclear how those resources would be provided. Mr. Makris suggested that a national push be made to make this idea a reality by the spring of 2000.

Status of the Recent School Bombing in Littleton, Colorado

Ms. Jones asked Mr. Gablehouse to share some information on the school bombings that occurred in Littleton, Colorado, a few weeks ago. Mr. Gablehouse stated that Columbine High School, where the incident occurred, is located within South Jefferson County, which is actually closer to the city limits of Denver than Littleton. Jefferson County can be considered a rather large urban area with access to many resources, with 750 emergency responders, including elements from five fire departments, over 24 police agencies, area SWAT teams, etc. Even this rather large pool of available resources, Mr. Gablehouse stated that one important lesson is how quickly an incident of this size immediately consumes all of the available resources. In addition, there was no early on-site incident command. The Sheriff of the county was only in office for four months prior to the incident, which may explain some of the difficulties and conflicts with information management.

Mr. Gablehouse also noted that it appears that the two individuals responsible for the shootings obtained some of their information on how to make bombs from the Internet. However, it appears that they obtained their weapons by simply buying the equipment from someone they knew. Mr. Gablehouse stressed that, in the aftermath of the incident, the Internet proved to be a very valuable asset as a means to manage data and communicate. Response and planning organizations realized that they must do a better job coordinating resources with neighboring agencies and jurisdictions, and the Internet might be an effective way to accomplish this goal. Mr. Gablehouse also noted that there is a recognition that during an incident, real-time information is critical. LEPCs in the region have agreed to establish an even more aggressive program than originally planned to share RMP information through a publicly available shared database. Other organizations involved in the incident discussed conducting more community awareness, and use of the Internet seems to be the best option for these initiatives. Mr. Gablehouse predicted that there will be an even greater use of the Internet in community emergency response planning with the public. Governor Earl stated that, as an outsider, there appeared to be a large problem regarding who was in charge and questioned whether there are means to address that issue in advance. Mr. Gablehouse stated that most agencies tend to train as a coordinated group; the larger the group, the less interested they are in coordinating resources and capabilities. Incident command during this incident was dynamic and constantly changed as more qualified or senior personnel arrived on-scene. The one radio frequency used for communication was almost immediately overwhelmed; cellular phone traffic became the most prominent means of communication. There was also a truck driven by the SWAT team, which was assembled ad hoc with representatives from four different agencies. The initial call was merely for assistance and not specific capabilities or assets. Mr. Gablehouse stated that there is a need for the agencies involved to spend more time talking to each other about large disaster capabilities and not become insular in their own functions.

Mr. Makris noted that the Denver community spent significant time and resources on emergency response planning in preparation for the Summit of Eight last year. One would have expected that an infrastructure was left behind from those preparations that would have supported this response. As a result, Mr. Makris questioned what is being learned from similar preparations and whether anything significant is being gained. Mr. Gablehouse stated that, from his experience, planning for a specific event or venue, is very hard to translate to an unexpected incident. Simple differences, such as the layout of the school, create problems that cannot be planned for or predicted.

III. AVAILABILITY OF RMP DATA

Demonstration of RMP*Info

Ms. Shanahan demonstrated the soon-to-be-released RMP*Info web page and explained the functions of each section. She performed a sample query and displayed facility registration information, which includes date of receipt of RMP, postmark date, and whether the facility RMP plan is complete or incomplete. If the plan is incomplete, an error report indicates why the plan is complete. According to Ms. Shanahan, many of the plans are incomplete because no certification letter was included in the submission.

The process chemicals page, as demonstrated by Ms. Shanahan, displays the registered chemicals for each process. The accident history page includes on-site and offsite impacts, contributing factors, and changes that have occurred at the facility as a result of the accident. Dr. Rosenthal questioned the use of the terms "management error" and "human error" on the accident history page when describing the causes of accidents. Mr. Belke pointed out that facilities may report these types of errors in their accident reports. Ms. Little stated that, although some accidents are related to the actions performed by a person, they are not always due to human error. Dr. Rosenthal stated that human error and management error should not be included in the listing. Rather, EPA should have facilities examine the incidents and their systems and processes to determine why the incident occurred. He added that human error is an expected part of any process and so safety gates are included to provide protection against it. Mr. Makris responded, saying that facilities should attempt to eliminate human and management errors. In response, Dr. Rosenthal stated that systems are designed around certain performance standards and failure rates that are acceptable to society.

Next, Ms. Shanahan displayed the OCA data sections, which include the following message:

Information about offsite consequences related to worse case and alternative release scenarios (Sections 2-5) will not be posted on the Internet. EPA is currently working to determine a process for making this information available. As soon as a process is developed, that information will be posted on this page.

In the interim, you may be able to obtain the offsite consequences analysis by contacting the facility directly using contact information found in the Registration Section of the facility's RMP."

Dr. Rosenthal stated that, because EPA is required to give out information, they should include a section on this temporary web page listing a phone number for people to call to request it. Pam Nixon (Kanawha-Putnam Emergency Planning Committee) raised the concern that some requestors may want information for an area in which they do not reside.

Mr. Galassi stated that the 50,000 plus records that will be in the RMP*Info database would be helpful for facility inspections. Ms. Shanahan added that RMP*Info currently includes 500 RMPs, 217 of which are propane. In response to a question, she stated that all RMP information is due by June 21, 1999 and is expected to be entered into the RMP*Info database by September. Mr. Belke added that a large number of facilities (10,000 to 15,000) will not submit information because they are covered by the propane stay. Finally, Ms. Shanahan stated that RMP*Info will be easily accessed through EPA's Envirofacts web page.

Status of the OCA Issue

Ms. Jones began the discussion by stating that, since the Subcommittee last met, EPA has agreed with FBI not to post Sections 2-5 of the RMP on the Internet and also to work with the RMP Implementation Workgroup to address ways to make the data available to the public. In addition, there have been two congressional hearings on the issue, and EPA has been actively participating in an interagency workgroup to address the issue of making the OCA data available. Through the interagency workgroup, DOJ has indicated that it may not be possible to make the data available as outlined in FOIA and prevent someone else from posting it on the Internet. According to FOIA, if a government agency has data available electronically, they must also be prepared to disseminate it electronically. Currently, legislative and non-legislative approaches are being investigated to explore the ability to comply with FOIA.

Ms. Jones stated that the majority of representatives on the interagency workgroup recommended that EPA should respond to requests from the public for OCA data. EPA is prepared to do this, however, this option would not promote a dialogue about local risk. Therefore, in addition to EPA distribution, the facility, the implementing agency, the LEPC, and the SERC will eventually be listed as possible contacts for the OCA data. If the EPA button is selected, the phone number for the RMP Reporting Center is given. If the facility button is selected, the system explains where to find the facility contact name and phone number in the RMP. If the LEPC or SERC button is selected, the program links to the RTK-Net SERC/LEPC Net site. Ms. Jones noted that this approach has both positive and negative consequences. For example, LEPC might not be interested in providing RMP data to the public, but at the same time, the LEPC will also learn that there is community interest surrounding this issue. Ms. Jones asked for comments on the approach explained.

Mr. Gablehouse stated that he would like to see the LEPC button contained within the SERC button to illustrate that there is a layer with LEPCs under SERCs. This would help the user understand that if they are not able to obtain the data through the LEPC, they can submit a request with the appropriate SERC. Ms. Jones noted that at the implementing agency meeting recently held in Atlanta, some states that have been delegated as implementing agencies also indicated that they would like to be the first point of contact to the public. Therefore, EPA is working on developing a schematic to address this issue.

Mr. Langley stated that when the facility, SERC, or LEPC options are selected it should be made clear that these entities are not required to provide the information to the public. Mr. Langley stated that this might help eliminate frustration by users that is created when they are not able to obtain information from one or more of the sources identified.

General Discussion on Providing OCA Data

Ms. Warren questioned whether there are any entities besides EPA that have a legal obligation to provide the data to the public. Mr. Gablehouse stated that he believes that the Emergency Planning and Community Right-to-Know Act (EPCRA) requires that data be made available to the public. Ms. Warren also questioned whether discussions are being held that address the availability of the data to others, outside the local communities, for the purposes of conducting larger comparisons. Ms. Jones stated that the issue is still to be discussed and some potential options are being explored.

Mr. Weaver stated that it is unclear what options for providing OCA data to the public are still on the table and asked for clarification regarding what the Subcommittee promised to develop to provide OCA data to the public (e.g., a CD-ROM). Ms. Jones stated that those issues are being addressed within the interagency workgroup, which is working to achieve a balance between public right-to-know and national security; however, no final decisions have been made. Mr. Makris stated that the interagency workgroup is struggling to achieve this balance. The original debate centered around the posting of OCA data on the Internet, which might be used as a possible targeting tool for someone with bad intentions. The Subcommittee discussed that there are several mitigating actions that could be implemented to reduce the possibility that the data would be used for targeting. However, the discussions have moved beyond that point given the increased cautions surrounding Internet. As a result, the issue involves how the data should be made available if not via the Internet. In addition, there are several debates surrounding this issue. For example, who is entitled to whose data. In other words, are citizens of New York City entitled to data on Connecticut or New Jersey?

Governor Earl asked for clarification regarding whether the specific issue pertaining to allowing full access to the national data is still being considered. Ms. Jones stated that the debate centered on access to the national database in electronic format. Ms. Jones noted that she has not heard anyone express that the public should not have access to data for their community; however, the issue is how they obtain that information. Ms. Jones stated that all the ideas discussed at the last Subcommittee meeting remain under consideration, but the proposal is not finalized.

Governor Earl responded by stating that the Accident Prevention Subcommittee, which is an advisory committee to EPA, has stated with near unanimity that full disclosure of the data is what they advise. From a legal and practical standpoint, these data will be ultimately made available in one form or another by someone. Mr. Gablehouse agreed with Governor Earl and Ms. Warren and stated that if the RMP program was designed to prevent accidents, EPA should convey to other opposing agencies that their attempts to limit the data are destructive and harmful. There are local organizations that want information on the facilities in their communities and if the data are not available in a uniform and reliable database, then it will be guessed at and ultimately incorrect data will be used. If information is to be provided, it should be correct and useful.

Dr. Rosenthal restated that the common ground achieved at the last Subcommittee meeting was to support full communication to local communities. With this in mind, Dr. Rosenthal stated that he believes that the Agency is attempting to dodge the responsibility of making the information available to the public and will ultimately be unsuccessful in their attempt. Dr. Rosenthal noted that the issue of primary concern is that of cost-effectiveness, which is not an issue for EPA to be concerned with. If the government or Congress decides that it is not acceptable to provide the data to the public, they will have to address that issue themselves. However, EPA is under obligation to make the data available and that cannot be handed off to non-existent facilities. Dr. Rosenthal stated that, as a matter of public policy, the best way to resolve the issue, is for EPA to do what they are required to do under the CAA. If other entities are opposed to this, the proper steps will be taken to change the situation.

Ms. Warren expressed concern that the environmental interest she represents is not present on the interagency workgroup mentioned by Ms. Jones. She stated that she would rather allow Congress to make the final decision. Ms. Warren stated that EPA should not be involved in a debate with other players who have different mandates and are not concerned about right-to-know and public awareness. Ms. Warren added that EPA currently has an obligation to make the data available and that is what they should be doing.

Ms. Littles agreed and stated that PACE supports full and complete access to the national data. However, the issue of how PACE as an organization, as well as other organizations, will obtain the data, remains. Ms. Littles stated that not only do the members of organizations such as PACE work in many of the covered facilities, but they are also members of the communities that surround these facilities. Therefore, it is important for organizations similar to PACE to obtain the data to make comparisons and work with other organizations to better represent and address the issues that their members are confronted with.

Public Comments

Mr. Barrish stated that, from an implementing agency's standpoint, it will be necessary for EPA to post the data as they are received, or develop a system for implementing agencies who currently will not have access to the national database until September, but will still be receiving requests for OCA data. If a system is not developed, implementing agencies will be forced to request data from EPA on a daily basis. Mr. Barrish also noted that a likely

requester will be the media, who will inevitably publish a very negative article if the implementing agencies are not able to provide the data to them. Mr. Finan suggested that, when a request is received, the implementing agency tell the requester that they will provide the data at which point the implementing agency will have to call EPA and request the data.

Mr. Langley reminded the Subcommittee that this issue will go away in September when someone requests the national data through a FOIA request and puts it on the Internet themselves. Mr. Langley expressed skepticism that a legislative change resolving this issue will be in place prior to September when the national data are available. Dr. Rosenthal agreed and noted that if EPA blocks the data from the Internet, both EPA and industry will be portrayed as attempting to limit public access.

Mr. Makris stated that at least part of the concern is that EPA has an obligation to do what is required of them by law; however, there are other organizations within the federal government that have opposing missions. Therefore, EPA has two options: (1) allow Congress to provide the solution; or (2) determine the best legislative solution that recognizes and address all the concerns expressed and offer it to Congress for debate. James Meade (DOJ) stated that, while it may be Congress' ultimate decision, other affected agencies have the right to weigh in on the decision-making process.

IV. WHARTON EPI STUDY - Irv Rosenthal

Dr. Rosenthal introduced the Accident Epidemiology Study being conducted under a cooperative agreement between Wharton and the U.S. EPA/CEPPO. This project will use the tools and methods of medical epidemiology to better understand the precursors of major chemical accidents and, ultimately, to devise improved approaches to preventing such accidents. Dr. Rosenthal stated that no databases in the United States or Europe provide comprehensive information on accident reporting. As a result, it is difficult to discern if accident rates are increasing or decreasing. He stated that although databases on the number of accidents exist, many of these databases are redundant or do not define terms such as "reportable accident," thus making analysis difficult. Analysts in the Wharton project decided to use the approach used in epidemiological studies to determine whether the number of chemical accidents is increasing or decreasing. One of the limitations of this approach is that analysts do not know which types of facilities are at higher risks for accidents. An example of the epidemiological counterpart to this information is the fact that disease is often determined by socioeconomic status.

According to Dr. Rosenthal, the Wharton study tries to transfer the epidemiological approach to the RMP database by asking the following questions:

- What is the trend in accident rates over the past five years?
- Have the OSHA regulations been effective in preventing chemical accidents?
- Are accident rates a function of geographical area? That is, do some EPA regions do a better job of preventing chemical accidents than others?
- Are there "childhood effects?" That is, are plants that are built during times of economic stress more likely to be at a disadvantage than those built during economic booms?

He added that none of these questions indicate causal relationships. Rather, they can be used to test hypotheses. One of these hypotheses is that higher occupational injuries and illnesses (OII) statistics correspond to a higher incidence of major accidental releases. The OII is a statistic that is published widely and is used by the Department of Labor as well as by OSHA to prioritize inspections.

Discussion

Mr. Weaver expressed concern that the data used by the Wharton study may not be reliable enough to show a correlation between the factors mentioned above and accident rates. Dr. Rosenthal responded that any study needs to examine to what degree data errors will compromise the study results. The Wharton study has looked at using OII data and accident release reporting data. However, the latter are less reliable because many facilities are hesitant to report accidents. In response to a question from Mr. Weaver about using the data to interpret significant environmental impact, Dr. Rosenthal replied that there was a 20 percent increase in OII reporting after the Bhopal accident because facilities began interpreting the rules correctly.

Dr. Rosenthal stated that, if the study were to examine the hypothesis that most accidents are caused by management failure of the system, analysts would look at each firm that experienced accidents and establish control groups. Then, the study would examine the number of firms with accidents versus the number without accidents. He stated

that this is the classic epidemiological approach. Mr. Langley stated that, if the study is looking at the number of accidents per unit of production, the numerator in the equation (number of accidents) is desirable; however, the denominator could cause problems. The study would need to look at firms with equal amounts of production and compare them across regions of the United States.

Mr. Burk asked what external parameters would typically be plugged into the equation. Dr. Rosenthal replied that profitability and production data should be included. Profitability is available from Dun and Bradstreet, but gathering information on production would require a confidential and intensive research study. In response to a suggestion from Mr. Galassi that the study might use OSHA PSM information, Dr. Rosenthal stated that the study might look at firms covered by the OSHA PSM standard and determine if similar individual segments of industry involve increases or decreases in accident rates. He added that the index of success would be a decrease in accidents and the decrease should be greater than that attributable to fines under the OSHA PSM standard.

Dr. Rosenthal stated that EPA should ask what can be done by CEPPO to produce data useful for accident prevention and to get at the root causes of accidents. In response, Ms. Jones asked the Subcommittee for input on particular activities or initiatives that EPA could undertake to accomplish this goal. Dr. Rosenthal noted that an annual report is the most important metric that exists for both industries and agencies to determine how successful an entity is at preventing accidental releases. In addition, the additional burden of preparing an annual report should be rather small for most industries.

Mr. Gablehouse stated that there are a couple of useful things that could be done by EPA, including: (1) look at accidental histories in comparison to actual reporting databases to determine compliance; and (2) examine alternative release scenario information to determine whether accident reports bear any resemblance to predictions and are reliable. Ms. Warren stated that without public access to OCA data and public pressure, it is more important for EPA to determine the effectiveness of the RMP program, and, although it may not be able to be done immediately, over time the effectiveness should be assessed.

Chemical Safety Assessment Program

Ms. Jones announced that Sam Manan, of the Mary Kay O'Connor Process Safety Center, who spoke at the last meeting, will be conducting a round table on the chemical safety assessment program that is being developed. The round table is scheduled to take place June 2-3, 1999, at Texas A&M University. Mr. Makris stated that the important questions to be asked by the assessment program include: (1) are we getting better (reducing chemical accidents)?; and (2) how do we know if we are getting better? Dr. Rosenthal stated that the efforts of any one group must include what EPA and the Center for Chemical Process Safety (CCPS) have already done. He stated that CCPS is the single most important influence on process safety. Dr. Rosenthal stated the data could also be used to determine whether various EPA regions that are implementing the program are doing a good job and whether particular ones are better than others.

Mr. Makris stated that the process will not be successful unless it is conducted jointly with industry. Dr. Rosenthal stated that the purpose of the round table is to stimulate a discussion of goals, regardless of whether consensus is achieved. Ms. Little asked if it was possible to obtain more information that can be shared with the international unions. Mr. Makris asked the Subcommittee members to review the list of attendees for the round table, which was distributed to Subcommittee members prior to the meeting, and provide input as to whether there are any glaring omissions on the list.

Mr. Makris stated that, at the most recent round table meeting, in response to the question of how are we doing in the risk management process, he heard comments expressed that indicate that industry has learned a lot through the process and the plants have improved their safety. Mr. Makris stated that he also heard demands that EPA pay attention to the data received, as well as frustration over the time and money spent preparing OCA data. Mr. Barrish noted that he heard comments expressed from the regulated community that the next time around, some things could be done better. Kari Barrett (Chemical Manufacturers Association) noted that opening the doors of communication was a very positive step. A report of the meeting is being prepared, and it will be distributed along with the minutes from this meeting.

V. LOOKING BEYOND JUNE 21, 1999 - Kathy Jones

Ms. Jones opened this portion of the meeting by stating that it was a working session to generate ideas for next steps for CEPPPO and EPA to take with regard to the RMP. She stated that CEPPPO has developed a products matrix which is posted on its web page and updated monthly. She explained that EPA/CEPPPO wants to look beyond June 21, 1999, to determine what is needed to make the RMP program work.

Ms. Jones stated that several public interest organizations wrote to Peter Robertson, Acting Deputy Administrator of EPA, and suggested ways for EPA to proactively communicate RMP information in public awareness campaigns that help people obtain and use RMP information to reduce hazards. The letter suggested that EPA take three actions:

1. Inventory public constituencies with an interest in chemical hazard information, including groups not traditionally associated with chemical hazard prevention, and develop a proactive communication strategy for each of these constituencies.
2. Create diverse public access services and mechanisms for national RMP information.
3. Produce timely and useful information products.

Ms. Jones asked three signatories of the letter to Mr. Robertson to join the Subcommittee at the table for this discussion: Rick Blum, OMB Watch; Paul Orum, Working Group on Community Right-to-Know; and John Chelen, Unison Institute. The letter to Mr. Robertson suggested additional public constituencies that should be involved including:

- (a) Educators, researchers, and university hazard reduction centers;
- (b) National and local news media;
- (c) The general public;
- (d) Community groups, resource centers, and citizen advisory councils;
- (e) Social justice, environmental, and labor organizations;
- (f) Facility environmental managers;
- (g) Investors, lenders, and insurers;
- (h) Physicians networks, health departments, nursing homes, and hospitals;
- (I) Emergency responders (police, fire, medical services, LEPCs, etc.);
- (j) School districts and parent-teacher associations; and
- (k) Planning commissions, zoning boards, and public works departments.

Ms. Jones asked the Subcommittee if small business organizations (such as the Small Business Administration) should be added. Dr. Rosenthal expressed concern that small businesses often cannot afford to travel in order to attend meetings. Mr. Orum suggested that it is unknown how school districts, zoning boards, and insurers might use RMP information. Mr. Chelen stated that the insurance industry would have a lot of interest in national data on chemical accidents and although they may not participate in the RMP process, they would probably want to know that the data exist.

Governor Earl stated that it would be easy to get state legislator organizations and governors organizations involved in the RMP process. Mr. Gablehouse added that the National Governors Association could provide access to emergency planners, which would be an alternative to contacting them through SERCs.

Ms. Macko asked the group whether it is better to contact groups that EPA has not yet worked with through large national associations or attempt to contact small groups individually. Mr. Orum suggested that EPA start with large organizations and make two lists, one of people who would be interested and another of activities in which they may be interested. Ms. Jones suggested that the RMP Implementation Workgroup might develop strategies to enable these groups to use RMP information.

Ms. Macko stated that CEPPPO plans to do a large roll-out in the fall and approach the use of RMP information in a holistic manner. That is, CEPPPO recognizes and wants to help others recognize that all of the groups listed can use RMP information in some way. Ms. Jones suggested that EPA might also support a large event every five years to maintain public interest in RMP information.

Next, Ms. Jones explained that the letter listed specific public access services and mechanisms (beyond the Internet) that must be established by EPA to ensure complete, national RMP information, including:

- (a) Establish a public "800" hot line (multi-lingual);
- (b) Dedicate liaisons to conduct analysis, rank hazards, and respond to queries;
- © Distribute complete RMP information through libraries;
- (d) Provide quick-find services for information on specific facilities;

- (e) Provide same-day fax, mail, and electronic services for facility RMPs;
- (f) Use maps and mapping tools to clearly communicate hazards;
- (g) Produce a complete CD-ROM;
- (h) Develop links to inherent safety resources;
- (I) Notify communities of anticipated changes (RMP updates, permits, etc.); and
- (j) Evaluate routinely all point of access to RMP information.

Ms. Jones asked the Subcommittee to review these mechanisms and consider:

- What is the specific activity involved?
- Who should lead the activity?
- What is the priority of the activity (high, medium, low)?
-

(a) Establish a Public "800" Multi-lingual Hotline

Regarding the establishment of a public "800" hotline, Ms. Jones stated that currently, the number is not toll-free or multi-lingual, but it does provide an avenue for the public to request RMP data. Ms. Jones noted that the reporting center was chosen because it is better equipped than the EPCRA hotline to handle requests and is partnered with the toxic release inventory program.

Governor Earl stated that at the last Clean Air Act Advisory Committee meeting, the Committee spent time discussing environmental justice issues. Because a large majority of the covered facilities under the RMP program are located in minority areas, making the public hotline bi-lingual should be a priority as a practical matter not just a politically correct issue. Ms. Warren also noted that the telephone number should be advertised on every piece of paper that is distributed by EPA related to the RMP program.

In response to the issue of establishing a toll-free public hotline, the Subcommittee engaged in a general discussion regarding the best way to communicate information about RMPs to the public. Dr. Rosenthal questioned whether it would be enough if a facility commits a pledge to EPA that upon receiving a request for RMP data, it will forward it on to EPA to handle. Ms. Warren expressed concern that follow-ups to the requests could not be confirmed and facilities may be untrustworthy. In addition, depending on who is requesting the data, several individuals may not wish to have the facility know their identity. Dr. Rosenthal stated that the initial burden could be put on the facility, but the option to go to EPA should still remain. Mr. Orum reminded the Subcommittee that there are ways in which even FOIA requests can be made public because the requests are public information. This should be addressed because protecting the anonymity of the requestor is held as a very high challenge.

Mr. Burk stated that he would prefer that face-to-face communication between the LEPC and the community be the first option. If an individual prefers not to go to the LEPC, they can then go to EPA. Dr. Rosenthal agreed and noted that he supports two-way communication for two reasons: (1) although there is the presumption that industry can provide a spin to the data and the public will not know the difference, the public is actually much more perceptive than given credit for; and (2) the facility is the entity that benefits the most from two-way communication. Ms. Nixon stated that in 1994 in the Kanawha Valley, communications became more open even though only a few citizens were on the communications committee. At the first meeting there was a very open dialogue with the plant managers on the front panel. At the most recent meeting, there was a "mall" set-up with booths set-up for individuals to visit. However, this format prohibited the entire group from hearing the questions and answers asked by others. The group was assembled at the end for a final question and answer period; however, by that time, most of the questions had already been answered individually. Ms. Nixon also noted that the media was also in attendance and publicized the event in the news. Ms. Nixon added that the roll-out was announced through invitations that were distributed to legislators and other members of the community. In addition, advertisements were placed in local newspapers to announce the roll-out.

Ms. Littles stated that she supports the data being placed on the Internet; however, with that no longer an option, the mechanisms proposed are the next and very important steps towards reducing the hazards that exist. Ms. Littles also noted that companies such as DuPont are the exception to the rule when community involvement is the issue. However, Ms. Littles stated that she wished other, smaller companies that are not intent on sharing their information with the public could be represented on the Subcommittee. In addition, she added that employees are sometimes retaliated against when they inquire about sensitive information regarding their facility. Dr. Rosenthal agreed, but noted that if a facility is willing to be listed as the first reference to the public, it would greatly reduce the use of EPA's very limited resources.

Ms. Warren stated that because not posting OCA data on the Internet eliminates a large information base that would allow the public to conduct their own analyses, EPA should view the list of mechanisms as initiatives that they have an affirmative obligation to develop. Ms. Jones stated that EPA intends to do that and will turn the list over to the RMP Implementation Workgroup for further development. Ms. Jones thanked the environmental representatives for providing the list and noted that, while not all of the suggestions relate to OCA data, they are all very valuable. Ms. Jones concluded the discussion by noting that the current plan is to monitor how information requests are received and make the appropriate revisions as necessary.

(b) Dedicate Liaisons to Conduct Analysis, Rank Hazards, and Respond to Queries

Dr. Rosenthal questioned whether evaluating the potential consequences of a substance is the proposed approach to rank hazards. Mr. Orum responded that there are several ways to rank hazards, but determining the potential consequences is definitely one important approach.

Ms. Jones noted that if EPA is restricted to provide OCA data, then representatives from all levels of government will have to be more creative in their approaches of communicating risk. Mr. Burk stated that the likelihood that EPA will be given the resources to do all that they are capable of is small. As a result, EPA will be forced to rely on facilities to take even more initiative. However, there are many facilities with even less resources than EPA, in which case no attempt to stimulate a community dialogue will be made.

In response to comments about a national ranking scheme for chemical facilities, Dr. Rosenthal stated that a national ranking scheme would have local level problems; however, local level rankings are often already done. Mr. Langley added that users of risk information want to make national comparisons of local level data. Ms. Jones stated that it is not possible to put all of the individual RMP data elements on the web in a searchable form. Dr. Rosenthal stated that it is possible to compare data on specific facilities to a national average, which does not present a security issue. Ms. Warren stated that, if EPA and the public do not know who the facilities are or where they are located, they will not know which ones are doing great prevention work. Mr. Chelen stated that EPA and the public need to be able to look at the national average. He added that it saves legwork for local officials if EPA calculates it and that calculating the average on a national level eliminates redundancy. Mr. Makris stated that EPA does have an obligation to perform the analysis and that they will do it in a variety of ways, one of which is on a national average. Dr. Rosenthal agreed that national averages are a more efficient method of analysis and that delivery of the analysis could be performed by local entities. He stated that analysis and delivery of information are not always best performed by the same group. Mr. Chelen stated that regional media often do stories on national companies and they would be interested in looking at facilities' national profiles. Mr. Earl stated that they may file a FOIA request if they need national data.

Mr. Finan stated that the signatories could assist the RMP Implementation Workgroup by providing information on other federal, state, and local risk communication programs (besides TRI). He asked how these programs plug into environmental justice issues. Mr. Gablehouse stated that the list of public access services included in the letter to Mr. Robertson is good, but added that federal agencies should not provide analysis of risk data because this would exclude the middle tier of people involved in the process, such as local emergency planners. He stated that it is critical to provide public access to data in order to: (1) allow the public to confirm what they are being told about risk and to make judgements on it and (2) fulfill the needs of local and possibly state planners.

Mr. Orum stated that facilities can take steps to reduce risk, including increasing security and decreasing inherent hazards. He distributed a copy of draft legislation circulated by Congressman Henry Waxman (D-CA) and added that, if there is a risk problem, facilities and EPA can take other steps to decrease it besides just increasing public access to risk information. Mr. Langley added that RMP information other than OCA data can be used to communicate the risks at various facilities. He cited an example in Augusta, Georgia, where a school board is making a decision on chemical facility siting. Region 4 performed a risk analysis and changed the way the school board went about selecting sites.

Y2K Alert

Mr. Makris opened the discussion on the Year 2000 (Y2K) issue and its effect on risk and accident prevention issues. Mr. Burk stated that DuPont has established a corporate leadership team that is identifying potential problems and developing ways to address them. Ms. Barrett stated that CMA is working with other trade associations to determine various industries' levels of preparedness. Mr. Weaver stated that associations are working

together to address Y2K. Mr. Gablehouse stated that EPA needs to address the problem of phone system failure and resulting emergency dispatch failures. In response, Dr. Rosenthal stated that federal agencies are best equipped to deal with communication systems problems. He added that problems with small to medium sized suppliers are not necessarily best addressed by federal agencies.

Ms. Nixon stated that the Kanawha Valley LEPC performed an emergency drill to address potential Y2K problems. No report has been issued yet. She added that most companies will have Y2K systems in place and tested by June-July 1999. Mr. Rosenthal stated that large facilities have power failure contingency plans, which should be sufficient to address Y2K failures because these will result from shutdowns, not catastrophic failures. Finally, Mr. Rosenthal stated that small businesses should be examined because they may not be completely aware of the Y2K issue. Ms. Littles agreed that larger facilities will be able to cope with the Y2K problems and that small to medium-sized businesses may not be adequately prepared.

Mr. Weaver spoke to two Senate representatives who suggested that there should be more communication about Y2K issues through EPA, trade groups, and web sites. He asked the group which industries are more vulnerable to Y2K problems and stated that small users of chemicals are some of the most vulnerable because of their lack of awareness. Mr. Langley stated that, in Georgia, the legislature recently proposed a law that requires chemical facilities to be Y2K ready by a certain date under the penalty of fines. The law includes inspections, publication of results, and substantial daily fines for noncompliance. The legislation was passed quietly without much knowledge of it in industrial sectors.

VI. COMMENTS FROM THE PUBLIC

No comments were provided.

VII. WRAP-UP - Jim Makris

Mr. Makris stated that the group will meet again in five to six months. EPA/CEPPO will send out any proposed legislation to Subcommittee members when it is introduced.

Ms. Shanahan concluded the meeting by stating that Subcommittee nominations expire in October 1999 and asked if the Subcommittee would like to continue. The group agreed that it should continue its work.

List of Attendees

Bill Allmond - National Association of Chemical Distributors
John Arnett - Copper & Brass/Fabricators Council
Jon Averback - U.S. EPA Region I/OGC
Rich Antoff - State of Delaware
Kari Barrett - Chemical Manufacturers Association
Stephanie Barrett - ICF for EPA
Bob Barrish - State of Delaware
Art Burk* - DuPont
D. Campbell - Mobil
Liz Cedar - CRC Press
Ben Chadwick - Booz-Allen & Hamilton/RMP Hotline
John Chelen - UNISON
Honorable Tony Earl* - Center for Clean Air Policy
Ashley Ehrhart - Booz Allen & Hamilton
Lee Feldstein - National Safety Council
Bill Finan - U.S. EPA/CEPPO
Tim Gablehouse* - Jefferson County LEPC
Tom Galassi - OSHA
for Richard Fairfax* - OSHA
Kevin Hogan - Thompson Publishing
Judy Jacobs - Bureau of National Affairs
Irene Jones - Huntsman
B. Kainth - BAH
Christine Kronk - ICF for EPA

D.R. Kuespert - AcuTech
Bert Langley* - Georgia Environmental Protection Division
Carole Macko - U.S. EPA/CEPPO
Jim Makris* - Director, U.S. EPA/CEPPO
Dorothy McManus - U.S. EPA/CEPPO
James Meade* - Department of Justice
Pam Nixon* - Kanawha-Putnam Emergency Planning Committee
Paul Orum - Working Group on Community Right-to-Know
Irv Rosenthal* - The Wharton School, Risk and Decision Processes Center
Alan Rotersa - AWWA
Karen Shanahan - U.S. EPA/CEPPO
Tom Snyder - Argonne National Laboratory
Ed Tracey - BGE
Gustavo Vazquez - U.S. DOE
Mike Walls - Chemical Manufacturers Association
Jackie Warren* -Public Interest Lawyer
Jack Weaver* - Director, Center for Chemical Process Safety
Maureen Wood - Chemical Safety Board

*** Indicates Accident Prevention Subcommittee Member**
Accident Prevention Subcommittee Members Not Present
Larry Gales* - Oklahoma Emergency Response Commission
Jerry Scannell* - President, National Safety Council